

FORMAL OPINION NO. 65

This committee has been solicited for an opinion touching on the ethics involved in a case wherein an attorney takes a default divorce case through submission of proof and to the point of entry of judgment, but refuses to submit the written form of judgment for the judge's signature until the fees are paid.

We find no specific case law in point, but the inference that may be drawn from Canons 6 and 7 and in particular DR 6-101(3) and DR 7-101(1) and (2) clearly condemn such practice.

A lawyer may not neglect a legal matter entrusted to him. Moreover a lawyer should diligently seek to serve his client in all lawful objectives. This does not mean that the attorney is necessarily trapped into performing free services should his client deliberately disregard an agreement concerning the payment of fees. In such cases, the lawyer may withdraw from further representation. In cases where a client's rights are not prejudiced it is conceivable that the lawyer may refuse to perform further services until the fee agreement is observed on the client's part.

In the instant case, however, we deem it improper for the lawyer to take a default divorce case to the point of obtaining the judgment of divorce without evidencing the same by submission of the written judgment. Inherently, certain social balances are affected by the adjudication of domestic relations cases. Not only is the client directly affected, but his or her spouse, other persons, and children can become enmeshed in unnecessary tangles while acting in reliance on a court's pronouncement of a dissolution of marriage which may not be wholly binding because of the technicality resulting from the absence of the written judgment. The lawyer in the first instance has the best opportunity to avoid these complications. He need not undertake a case unless appropriate financial safeguards are observed by the client although our highest ethic recommends that the lawyer reduce his fee in the case of poverty or make no charge at all. As stated, where a dispute arises over the amount of the

fee or where the client attempts to avoid payment, the lawyer has a clear right to withdraw or, short of judgment, he may refuse to take further action, which at that point, enables the client to discharge him and retain other counsel. In that case, the lawyer has a lien on the file and may be compensated. To take the case beyond this point, is akin to the lawyer placing himself in a judicial position--that is, the actual final granting of the remedy or the withholding of the same becomes dependent on the lawyer, except that the transaction is reduced to the practical status usually present at pawn shops.

DATED this 26th day of June, 1973.